

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WEATHER CENTRAL, INC and MY
WEATHER, LLC,

Plaintiffs,

v.

REINHART BOERNER VAN DEUREN, S.C.,
REINHART BOERNER VAN DEUREN, P.C.,
PETER J. MANGHERA, and ATTORNEYS'
LIABILITY ASSURANCE SOCIETY, INC.

Defendants.

OPINION and ORDER

08-cv-582-bbc

In this attorney malpractice suit, plaintiffs Weather Central, Inc. and My Weather, LLC allege that defendants failed to properly draft and prosecute certain of plaintiffs' patent applications. Jurisdiction is present under 28 U.S.C. § 1338. Air Measurement Technologies, Inc. v. Akin Gump Stauss Hauer & Feld, L.L.P., 504 F.3d 1262, 1273 (Fed. Cir. 2007) (malpractice suits stemming from mishandling of patent prosecution "arise under" federal patent law and may be brought in federal court under § 1338).

Now before the court is defendants' motion to dismiss Count IV of plaintiffs' complaint.¹ Defendants point out that under Count IV, plaintiffs allege facts related only to a request for punitive damages under Wis. Stat. 895.043(3), which is not an independent cause of action under Wisconsin law. (The parties agree that Wisconsin law applies to plaintiffs' claims). Although defendants are correct, it is unnecessary to dismiss Count IV. Plaintiffs agree that their "claim" in Count IV is simply a request for punitive damages; therefore, I will construe Count IV as a request for damages and deny defendants' motion to dismiss Count IV as unnecessary.

ORDER

IT IS ORDERED that the motion of defendants Weather Central, Inc., and My Weather, LLC., to dismiss Count IV of plaintiffs Reinhart, Boerner, Van Deuren, S.C., Reinhart, Boerner, Van Deuren, P.C., Peter J. Manghera, and Attorneys' Liability Assurance

¹Although defendant's motion to dismiss has been technically mooted by plaintiffs' filing an amended complaint, the amended complaint reasserts "Count IV"; therefore, I will treat defendant's motion as a motion to dismiss plaintiff's amended complaint rather than require defendant to file a second motion.

Society, Inc.'s amended complaint, dkt. #26, is DENIED as unnecessary.

Entered this 10th day of February, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge